

House Bill 915

By: Representatives Bearden of the 68th, Jerguson of the 22nd, Franklin of the 43rd, Everson of the 106th, Rice of the 51st, and others

A BILL TO BE ENTITLED
AN ACT

To enact the "Second Amendment Protection Act of 2008"; to amend Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to dangerous instrumentalities and practices, so as to prohibit persons from attempting to solicit, persuade, encourage, or entice any dealer to transfer or otherwise convey a firearm other than to the actual buyer; to prohibit persons from aiding and abetting such actions; to provide for exceptions; to provide for penalties; to change certain provisions regarding the transportation and carrying of certain firearms and other weapons; to require firearm licenses to be issued more quickly; to provide for temporary licenses for initial applicants when licenses are delayed without cause; to provide for a cause of action and civil remedies where a license or renewal license is not timely issued; to prohibit certain confiscation or registration of legally owned and carried firearms during certain emergency conditions; to provide for exceptions; to provide for civil penalties; to amend Code Section 38-3-51 of the Official Code of Georgia Annotated, relating to the emergency powers of the Governor, so as to limit the Governor's emergency powers with respect to firearms; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known as and may be cited as the "Second Amendment Protection Act of 2008."

SECTION 2.

Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to dangerous instrumentalities and practices, is amended by adding a new Code Section to read as follows:

1 "16-11-113.

2 (a) Any person who attempts to solicit, persuade, encourage, or entice any dealer to
3 transfer or otherwise convey a firearm other than to the actual buyer or who willfully and
4 intentionally aids or abets any such person shall be guilty of a felony and, upon conviction
5 thereof, shall be punished by imprisonment for a period of not less than one nor more than
6 ten years or by a fine not to exceed \$25,000.00, or both.

7 (b) This Code section shall not apply to a federal law enforcement officer or a peace
8 officer as defined in paragraph (2) of Code Section 35-8-2 in the performance of his or her
9 duties or other person under such officer's direct supervision."

10 **SECTION 3.**

11 Said article is further amended by revising Code Section 16-11-126, relating to the offense
12 of carrying a concealed weapon, as follows:

13 "16-11-126.

14 (a) A person commits the offense of carrying a concealed weapon when such person
15 knowingly has or carries about his or her person, unless in an open manner and fully
16 exposed to view, any bludgeon, metal knuckles, firearm, knife designed for the purpose of
17 offense and defense, or any other dangerous or deadly weapon or instrument of like
18 character outside of his or her home or place of business, except as permitted under this
19 Code section.

20 (b) Upon conviction of the offense of carrying a concealed weapon, a person shall be
21 punished as follows:

22 (1) For the first offense, he or she shall be guilty of a misdemeanor; and

23 (2) For the second offense, and for any subsequent offense, he or she shall be guilty of
24 a felony and, upon conviction thereof, shall be imprisoned for not less than two years and
25 not more than five years.

26 (c) This Code section shall not permit, outside of his or her home, motor vehicle, or place
27 of business, the concealed carrying of a pistol, revolver, or concealable firearm by any
28 person unless that person has on his or her person a valid license issued under Code Section
29 16-11-129 and the pistol, revolver, or firearm may only be carried in a shoulder holster,
30 waist belt holster, any other holster, hipgrip, or any other similar device, in which event the
31 weapon may be concealed by the person's clothing, or a handbag, purse, attache case,
32 briefcase, or other closed container. Carrying on the person in a concealed manner other
33 than as provided in this subsection shall not be permitted and shall be a violation of this
34 Code section.

(d) This Code section shall not forbid the transportation of any firearm by a person who is not among those enumerated as ineligible for a license under Code Section 16-11-129, provided the firearm is enclosed in a case, unloaded, and separated from its ammunition.

(e) This Code section shall not forbid any person who is not among those enumerated as ineligible for a license under Code Section 16-11-129 from transporting a loaded firearm in any private passenger motor vehicle ~~in an open manner and fully exposed to view or in the glove compartment, console, or similar compartment of the vehicle; provided, however, that any person in possession of a valid permit issued pursuant to Code Section 16-11-129 may carry a handgun in any location in a motor vehicle.~~

~~(e)~~(f) On and after October 1, 1996, a person licensed to carry a handgun in any state whose laws recognize and give effect within such state to a license issued pursuant to this part shall be authorized to carry a handgun in this state, but only while the licensee is not a resident of this state; provided, however, that such license holder shall carry the handgun in compliance with the laws of this state."

SECTION 4.

Said article is further amended by revising Code Section 16-11-127, relating to carrying deadly weapons to or at public gatherings, as follows:

"16-11-127.

~~(a)(1) Except as provided in Code Section 16-11-127.1, a person is guilty of a misdemeanor when he or she carries to or while at a public gathering any explosive compound, firearm, or knife designed for the purpose of offense and defense~~ A firearms license issued pursuant to Code Section 16-11-129 shall authorize the licensee to carry a firearm or other weapon, concealed or unconcealed, in all areas of this state, except as specifically limited in this Code section. A license shall not authorize this licensee to use the firearm or other weapon in a manner that would violate any provision of state law. No local government or state-created authority shall adopt or enforce an ordinance or resolution that shall conflict with any provision of this Code section.

(2) Nothing in this Code section shall be construed to authorize a law enforcement officer to inspect any firearm or other weapon without probable cause that a crime has been committed.

~~(b)(1) For the purpose of this Code section, 'public gathering' shall include, but shall not be limited to, athletic or sporting events, churches or church functions, political rallies or functions, publicly owned or operated buildings, or establishments at which alcoholic beverages are sold for consumption on the premises. Nothing in this Code section shall otherwise prohibit the carrying of a firearm in any other public place by a person licensed or permitted to carry such firearm by this part~~ A license issued pursuant to Code Section

16-11-129 shall not authorize a person to carry a firearm or other weapon into a place where the carrying of weapons is prohibited by federal law.

(2) A license issued pursuant to Code Section 16-11-129 shall not authorize a person to carry a firearm or other weapon into a courthouse where:

(A) Security personnel and electronic weapons screening devices are permanently in place at each entrance;

(B) Security personnel electronically screen each person who enters to determine whether such person is carrying a weapon of any kind; and

(C) Security personnel require each person who is carrying a weapon of any kind to leave such weapon in the possession of the security personnel while such person is in such building.

~~(c) This Nothing in this Code section shall not apply to competitors participating in organized sport shooting events. Law enforcement officers, peace officers retired from state or federal law enforcement agencies, judges, magistrates, solicitors-general, and district attorneys may carry pistols in publicly owned or operated buildings be construed to limit, restrict, or prohibit in any manner the existing rights of a private property owner, unless such private property has been leased to a government entity, and nothing in this Code section shall be construed to limit, restrict, or prohibit in any manner the existing rights of a private tenant, private employer, or private business entity.~~

~~(d) It is an affirmative defense to a violation of this Code section if a person notifies a law enforcement officer or other person employed to provide security for a public gathering of the presence of such item as soon as possible after learning of its presence and surrenders or secures such item as directed by the law enforcement officer or other person employed to provide security for a public gathering A person who is in compliance with this Code section shall be authorized to carry a firearm or other weapon in all areas of this state notwithstanding any other provision of law to the contrary, including, but not limited to, Code Sections 12-3-10, 16-11-34.1, 16-11-127.1, 16-12-123, 16-12-127, 27-3-1.1, 27-3-6, and 27-4-11.1.~~

SECTION 5.

Said article is further amended by revising paragraph (1) of subsection (a) of Code Section 16-11-127.1, relating to carrying weapons within school safety zones, at school functions, or on school property, as follows:

"(1) 'School safety zone' means in, on, or within 1,000 feet of any real property owned by or leased to any public ~~or private~~ elementary school, secondary school, or school board and used for elementary or secondary education and in, on, or within 1,000 feet of

1 the campus of any public or private technical school, vocational school, college,
2 university, or institution of postsecondary education."

3 **SECTION 6.**

4 Said article is further amended by repealing and reserving Code Section 16-11-128, relating
5 to carrying pistol without license, in its entirety.

6 **SECTION 7.**

7 Said article is further amended by revising subsection (d) of Code Section 16-11-129,
8 relating to a license to carry a pistol or revolver and temporary renewal permits, as follows:

9 "(d) *Investigation of applicant; issuance of license; renewal.*

10 (1) For both license applications and requests for license renewals, the judge of the
11 probate court shall, within two business days following the receipt of the application or
12 request, direct the law enforcement agency to request a fingerprint based criminal history
13 records check from the Georgia Crime Information Center and Federal Bureau of
14 Investigation for purposes of determining the suitability of the applicant and return an
15 appropriate report to the judge of the probate court. Fingerprints shall be in such form
16 and of such quality as prescribed by the Georgia Crime Information Center and under
17 standards adopted by the Federal Bureau of Investigation. The Georgia Bureau of
18 Investigation may charge such fee as is necessary to cover the cost of the records search.

19 (2) For both license applications and requests for license renewals, the judge of the
20 probate court shall, within two business days following the receipt of the application or
21 request, also direct the law enforcement agency to conduct a background check using the
22 Federal Bureau of Investigation's National Instant Criminal Background Check System
23 and return an appropriate report to the probate judge within 30 days.

24 (3) When a person who is not a United States citizen applies for a license or renewal of
25 a license under this Code section, the judge of the probate court shall direct the law
26 enforcement agency to conduct a search of the records maintained by the United States
27 Bureau of Immigration and Customs Enforcement. As a condition to the issuance of a
28 license or the renewal of a license, an applicant who is in nonimmigrant status shall
29 provide proof of his or her qualifications for an exception to the federal firearm
30 prohibition pursuant to 18 U.S.C. Section 922(y).

31 (4) The law enforcement agency shall ~~notify~~ report to the judge of the probate court
32 within ~~50~~ 30 days, by telephone and in writing, of any findings relating to the applicant
33 which may bear on his or her eligibility for a license or renewal license under the terms
34 of this Code section. When no derogatory information is found on the applicant bearing
35 on his or her eligibility to obtain a license or renewal license, a report shall not be

required. When the law enforcement agency fails to report to the probate judge within 30 days as required by this Code section, there shall be a rebuttable presumption that no derogatory information is found. The law enforcement agency shall return the application and the blank license form with the fingerprint thereon directly to the judge of the probate court within such time period. Not later than ~~60~~ 45 days after the date of the application, the judge of the probate court shall issue the applicant a license or renewal license to carry any pistol or revolver ~~if no~~ unless facts establishing ineligibility have been reported ~~and if~~ or unless the judge determines the applicant has not met all the qualifications, is not of good moral character, ~~and or~~ has ~~complied~~ failed to comply with ~~all~~ any of the requirements contained in this Code section."

SECTION 8.

Said article is further amended by revising Code Section 16-11-129, relating to a license to carry a pistol or revolver and temporary renewal permits, by adding a new subsection to read as follows:

"(j) When an eligible applicant who is a United States citizen fails to receive a license, temporary permit, or renewal license within the time period required by this Code section and the application or request has been properly filed, the applicant may bring an action in mandamus or other legal proceeding in order to obtain a license, temporary license, or renewal license, and such applicant shall be entitled to recover his or her costs in such action, including reasonable attorney's fees."

SECTION 9.

Said article is further amended by adding a new Code Section to read as follows:

"16-11-135.

(a) No officer or employee of the state or any political subdivision thereof, member of the National Guard in the service of the state, or any person operating pursuant to or under color of state law, receiving state funds, under control of any official of the state or political subdivision thereof, or providing services to such officer, employee, or other person, while acting during a declared official state of emergency, shall:

(1) Temporarily or permanently seize, or authorize seizure of, any firearm the possession of which is not prohibited under Article 4 of Chapter 11 of this title, other than as evidence in a criminal investigation;

(2) Require registration of any firearm for which registration is not required by Article 4 of Chapter 11 of this title;

(3) Prohibit possession of any firearm, or promulgate any rule, regulation, or order prohibiting possession of any firearm, in any place or by any person where such possession is not otherwise prohibited by Article 4 of Chapter 11 of this title; or

(4) Prohibit the carrying of firearms by any person otherwise authorized to carry firearms under Article 4 of Chapter 11 of this title, solely because such person is operating under the direction, control, or supervision of an agency of the state or political subdivision thereof during a declared official state of emergency.

(b) Any individual aggrieved by a violation of this Code section may seek in the courts of this state relief in an action at law or in equity or other proper proceeding for redress against any person who subjects such individual, or causes such individual to be subjected, to the deprivation of any of the rights, privileges, or immunities provided by this Code section.

(c) In addition to any other remedy at law or in equity, an individual aggrieved by the seizure or confiscation of a firearm in violation of this Code section may bring an action for return of such firearm in the superior court of the county in which that individual resides or in which such firearm is located. In any action or proceeding to enforce this Code section, the court shall award the prevailing party, other than the state or political subdivision thereof, reasonable attorney fees."

SECTION 10.

Code Section 38-3-51 of the Official Code of Georgia Annotated, relating to the emergency powers of the Governor, is amended by revising paragraph (8) of subsection (d) as follows:

"(8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, ~~firearms, explosives, and combustibles; provided, however, that any limitation on firearms under this Code section shall not include an individual firearm owned by a private citizen which was legal and owned by that citizen prior to the declaration of state of emergency or disaster or thereafter acquired in compliance with all applicable laws of this state and the United States; and~~".

SECTION 11.

All laws and parts of laws in conflict with this Act are repealed.